(iv) Asthma;

(v) Diabetes;

(vi) Periodontal disease;

(vii) Autoimmune disease;

(viii) Autoimmune encephalitis;

(ix) Multiple sclerosis;

(x) Allergy; and

(xi) Delayed-type hypersensitivity.

In response, applicants hereby elect, with traverse, Group III, claims 3-6, part of claims 7-9, claim 10, part of claims 11-13 and part of claims 16-25. Applicants also hereby elect, with traverse, species (vii), autoimmune disease, in the event no generic claim is held allowable. All elected claims are, or may be, readable on this species.

REMARKS

Applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement. Under 35 U.S.C. §121, restriction may be required if two or more independent and distinct inventions are claimed in one application. Under M.P.E.P. §803,

the Examiner must examine the application on the merits, even though it includes claims to distinct inventions, if the search and examination can be made without serious burden.

The inventions of Groups I-III and Species i-xi are not independent. Under M.P.E.P. §802.01, "independent" means there is no disclosed relationship between the subject matter claimed. The inventions of Groups I-III and Species i-xi all relate to methods of treating inflammation by inhibiting the interaction between receptor for advanced glycation endproduct (RAGE) and its ligand. Applicants therefore maintain that Groups I-III and Species i-xi are not independent and restriction is not proper.

Furthermore, under M.P.E.P. §803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to distinct or independent inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent and distinct, and (2) there must be a serious burden on the Examiner if restriction is not required.

Applicants respectfully submit that there would not be a serious burden on the Examiner if restriction were not required, because a search of the prior art relevant to the claims of Groups I and II would not require a serious burden once the prior art relevant to Group III has been identified. Therefore, there would be no serious burden on the Examiner to examine Groups I-III together in the subject application. Hence, the Examiner must examine these Groups on the merits.

In view of the foregoing, applicants maintain that restriction is not proper under 35 U.S.C. §121 and respectfully request that the Examiner reconsider and withdraw the requirement for restriction.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorneys invite the Examiner to telephone them at the number provided below.

No fee, other than the $55.00 fee for a one-month extension of time, is deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231

3/27/03
Alan J. Morrison, Reg. No. 37,399 — Date

John P. White
Registration No. 28,678
Alan J. Morrison
Registration No. 37,399
Attorneys for Applicants
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, New York 10036
Tel. No. (212) 278-0400